

Docket No: 09-0548/09-0549
Consol.
R.O.M.: 10/26/10
Deadline: 11/01/10

TO: The Commission

FROM: Administrative Law Judge D. Ethan Kimbrel

DATE: October 18, 2010

SUBJECT: Apple Canyon Utility Company and Lake Wildwood Utilities Corporation ("ACUC" and "LWUC"; collectively "the Companies")

Proposed General Increase in Water Rates.

Petitions for Rehearing filed by Apple Canyon Utility Company and Lake Wildwood Utilities Corporation, Apple Canyon Lake Property Owners' Association ("ACLPOA") and Lake Wildwood Association ("LWA"), and the Illinois Attorney General ("AG").

Recommendation: Deny rehearing.

Please note that the final deadline for granting rehearing, statutorily, is November 1, 2010.

The Applicable Legal Standards:

Section 10-113 of the Public Utilities Act provides that:
Within 30 days after the service of any rule or regulation, order or decision of the Commission any party to the action or proceeding may apply for rehearing. . . . the Commission shall receive and consider such application and shall grant or deny such application in whole or in part within 20 days from the date of the receipt thereof by the Commission.

220 ILCS 5/10-113. This statute further provides that "No appeal shall be allowed from any rule, regulation, order or decision of the Commission unless and until an application for rehearing thereof shall first have been filed with and finally disposed of by the Commission." *Id.* This Commission's rules of Practice further provide that any application for rehearing "shall state the reasons therefore." 83 Ill. Adm. Code 200.880(a). When these standards are applied to the Petitions for Rehearing it becomes evident that no rehearing is warranted.

Public Comments

ACLPOA/LWA and the AG request rehearing of the decision to affirm the Administrative Law Judge's Order granting Staff of the Illinois Commerce Commission's Motion to Strike certain portions of ACLPOA/LWA's Brief arguing in pertinent part that both public comments from the public hearings held in this matter and statements posted to the Commission's e-docket system in this docket should be struck from the brief. The arguments made in their petitions for rehearing are essentially the same as the arguments presented in earlier briefs and during oral argument. The decision to grant Staff's motion is correct and the request for rehearing should be denied.

Pursuant to 220 ILCS 5/8-306(n) and 220 ILCS 5/2-107, I agree that the public comments and postings must be made available to the ALJ when drafting a recommended or tentative decision, finding or order. Contrary to ACLPOA/LWA and the AG's assertions, both the comments made at the public hearings and the statements posted to the Commission's e-docket system were reviewed. However, while the Commission may review and take note of the fact of the public comments, the specifics of these public comments are neither competent evidence nor a cognizable part of the record for decision, which renders them inappropriate bases for deciding questions of fact or law. Counsel for ACLPOA/LWA is aware of this which is why he chose to present the testimony of a resident of one of the service areas according to the Commission's rules of evidence. Why he chose to properly present the testimony of only one resident of the service areas is a question for counsel. Further, even if Staff's motion had been denied and the comments and references not were struck from ACLPOA/LWA's brief, the comments would not have been controlling.

No purpose would be served in granting rehearing on this issue.

SFIO Consulting

ACLPOA/LWA request rehearing of the decision to allow ACUC and LWUC to recover rate case expenses for SFIO Consulting costs arguing that the record is void of any substantive description of the work performed, the hours spent, or a description of the qualifications of SFIO Consulting. Staff found that the invoices were sufficient and ACLPOA/LWA provide no new arguments in its petition for rehearing to show that the decision to include the costs was incorrect. ACLPOA/LWA's arguments do not warrant rehearing.

Billing & Accounting Systems

ACLPOA/LWA request rehearing of the decision to include in Rate Base allocated costs associated with a new customer billing program and a new accounting program. Here too, ACLPOA/LWA restate its arguments from its briefs and the oral argument that not only are the billing program and accounting system not useful to ACUC and LWUC, but they are inordinately expensive for systems the size of ACUC and LWUC. The Petition also states, the cost allocated on a per customer basis is far in excess of what

other Utilities, Inc. customers have been allocated. Those arguments were dealt with in the September 9, 2010 Order and do not warrant rehearing.

Test Year O&M and General Expenses

The Companies request rehearing of the decision to accept Staff's proposed adjustment to test year O&M and General Expenses based on the five-year average of expenses for the years 2004 through 2008 and encompassing all expenses except depreciation, taxes, and amortization of CIAC. The September 9, 2010 Order agreed with Staff's position that the increase in expenses from 2007 to 2008 is not reasonable and should be adjusted. Staff's adjustment restates 2008 expenses to a normalized level and presents a more just and reasonable level of expense during the period that rates are in effect given the fact that Utilities, Inc. began to downsize its staff and consolidate positions in 2009 due to the lack of necessity in direct relation to the amount of capital improvements that are planned for future years. The September 9, 2010 Order fully considered and properly disposed of the Companies' arguments. The Companies' request for rehearing on this issue should be denied.

Rate Case Expense

The Companies argue that new information shows that as of September 30, 2010 the actual rate case expenses for ACUC were \$155,066 and \$155,979 for LWUC as opposed to the \$94,094 and \$90,585 respectively that the Commission allowed based on the evidence available as of March 31, 2010. The Companies also argue that it will incur additional expense associated with the rehearing and appeal anticipated to be filed by ACLPOA/LWA. For obvious reasons, it would be improper to grant the Companies' request for rehearing on these newly raised issues.

In summation, none of the arguments presented establish that an issue was decided incorrectly or with inadequate information. I recommend that the Commission deny rehearing.

DK:fs